IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	
	)	
Dallene N. Bracken,	)	DIVISION ONE
	)	
Respondent,	)	No. 63304-0-I
	)	
and	)	
	)	UNPUBLISHED OPINION
John L. Bracken,	)	
	)	
Appellant.	)	FILED: September 27, 2010
_____	)	

Dwyer, C.J. — John Bracken appeals from the decree dissolving his 19 year marriage to Dallene Bracken.[1] John contends that the trial court erred by ruling that the spouses' prenuptial agreement was unenforceable, in dividing assets, in awarding maintenance, and by ordering him to sign a confession of judgment. Finding no error, we affirm.

I

John and Dallene were married in 1987. In 2007, they separated after 19 years and 10 months of marriage. The Brackens had three sons, two of whom were teenagers at the time of trial.

Prior to their wedding, John and Dallene stood on unequal economic

[1] Hereinafter, the parties are referred to by their first names.

footing. Dallene, a high school graduate, worked as an auditor for a credit union, earning between $20,000 and $30,000 annually. John worked in commercial real estate, earning between $50,000 and $60,000 annually.

John's premarital assets also included extensive savings, trusts, real property, and limited partnership interests. John's grandfather, L.D. Bracken, invented Blistex lip balm, and John received income from two trusts created by his grandparents, the "L.D. Trust Funds." John also received a gift of approximately $1.5 million from his grandfather. John was a member of two limited partnerships in which he held investments totaling more than $290,000. He also owned a home in Arizona valued at $40,000.

In addition, John's father had passed away three years prior to the parties' marriage, and, as a result of his father's estate plan, John anticipated receiving a portion of royalty payments made to the Bracken family from Blistex, Inc. Indeed, in 1998, John received ownership of a 6.33 percent interest in Blistex Bracken LP (BBLLC), consistent with his expectation prior to the parties' 1987 marriage. BBLLC receives royalty income from Blistex, Inc. in accordance with the licensing agreement made between L.D. Bracken and the manufacturer. At the time of John and Dallene's dissolution, John's 6.33 percent interest in BBLLC was valued at over $1.3 million.

Prior to their wedding, John asked Dallene to sign a prenuptial agreement. John retained an attorney to draft the agreement and hired another

attorney to advise Dallene. Dallene met with her attorney and discussed the prenuptial agreement twice before she signed it. She made some minor substantive changes to the agreement to which John agreed.

The agreement served to protect John's interests in his separate property by prohibiting the distribution or consideration of separate property when dividing assets upon dissolution. It restricted separate property gifts to the community, allowing for separate property contributions only toward the family residence. The agreement further required that all community property be divided "as equally as possible" upon dissolution.

Before signing the agreement, John gave Dallene limited information as to the extent of his assets. John showed Dallene bank statements from his trust accounts and informed her verbally of his other assets. Although John mentioned the anticipated future interest in the family company, Dallene was not aware of the extent of his expectancies. John did not provide a list of assets to Dallene or to her attorney.

After their first child was born in 1988, Dallene did not work outside the home until 2000. During their 19 year marriage, John's annual salary did not exceed $60,000. Despite John's modest salary, the Brackens lived a life of privilege, living in extravagant homes, maintaining memberships in several private clubs, and enrolling their sons in private schools and select sports programs.

The Brackens were able to maintain this lifestyle because of John's separate property holdings. The 6.33 percent interest in BBLLC that John received in 1998 was, at the time of trial, valued at $1,326,500. In 2007,[2] John received $137,392.69 in income from the 6.33 percent interest in BBLLC alone. In 1998, John received an additional 20 percent interest in BBLLC in the form of a generation skipping trust (John L. Bracken GST) established by his mother. John obtained this percentage interest through gift and sale and was required to pay $7,600 per month in satisfaction of the purchase obligation. Although John's mother passed away in 2006, John continues to make monthly payments to her estate. The estimated value of the John L. Bracken GST is $4,258,800. In 2007, John received income of $441,262.74 from the John L. Bracken GST, giving him a gross income of $578,655.44 from his separate property holdings in BBLLC. The trial court found that when his mother's estate closes, John will receive one-third of the value of the estate, an amount between $2 million and $3 million. During their marriage, John and Dallene accumulated $1,186,000 in community property, largely in the form of equity in the family residence.

In August 2007, the parties separated. After their separation, John and Dallene sold the family home. John then purchased a home, known as the "Yertle" house, to serve as the primary residence for Dallene and their sons.

After a six-day trial, the trial court entered a decree of dissolution. The

[2] The most current financial information available to the trial court was from 2007. The trial was conducted in 2008.

trial court found the parties' prenuptial agreement unenforceable, divided the couple's assets and liabilities, and awarded maintenance to Dallene. The trial court made detailed findings as to the nature and extent of John's and Dallene's community and separate property. The trial court awarded Dallene the "Yertle" house, valued at $2 million. It ordered John to pay the mortgage debt, which amounted to $950,000 at the time of trial. It also ordered John to sign a confession of judgment, which may be entered if he defaults on the mortgage payments. The trial court awarded John the entirety of his separate property, valued at $5,716,400. John's pending inheritance, worth between $2 million and $3 million, was not included in that figure. However, John was ordered to pay Dallene maintenance of $10,000 per month for 10 years and $5,000 per month for 10 years thereafter.

John appeals.

II

John contends that the trial court erred by ruling that the parties' prenuptial agreement was unenforceable. We disagree.

"Prenuptial agreements are contracts subject to the principles of contract law." In re Marriage of DewBerry, 115 Wn. App. 351, 364, 62 P.3d 525 (2003).

> To determine the enforceability of a prenuptial agreement, this court undertakes a two-prong analysis. In re Marriage of Matson, 107 Wn.2d 479, 482–83, 730 P.2d 668 (1986); see also In re Estate of Crawford, 107 Wn.2d 493, 730 P.2d 675 (1986); In re Marriage of Hadley, 88 Wn.2d 649, 565 P.2d 790 (1977); Friedlander v. Friedlander, 80 Wn.2d 293, 494 P.2d 208 (1972); Hamlin v. Merlino, 44 Wn.2d 851, 272 P.2d 125 (1954). The

> burden of proof lies with the spouse seeking enforcement. Friedlander, 80 Wn.2d at 300.
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> Under the first prong, the court determines whether the agreement is substantively fair, specifically whether it makes reasonable provision for the spouse not seeking to enforce it. Matson, 107 Wn.2d at 482. If the agreement makes a fair and reasonable provision for the spouse not seeking its enforcement, the analysis ends; the agreement is enforceable. This is entirely a question of law unless there are factual disputes that must be resolved in order for a court to interpret the meaning of the contract. In re Marriage of Foran, 67 Wn. App. 242, 251 n. 7, 834 P.2d 1081 (1992).
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> If, however, the agreement is substantively unfair to the spouse not seeking enforcement, the court proceeds to the second prong. Under the second prong, the court determines whether the agreement is procedurally fair by asking two questions: (1) whether the spouses made a full disclosure of the amount, character, and value of the property involved and (2) whether the agreement was freely entered into on independent advice from counsel with full knowledge by both spouses of their rights. Matson, 107 Wn.2d at 483. If the court determines the second prong is satisfied, then an otherwise unfair distribution of property is valid and binding. [Matson], at 482.
>
> Analysis under this second prong involves mixed issues of policy and fact, and accordingly review is de novo but undertaken in light of the trial court's resolution of the facts. See Foran, 67 Wn. App. at 251. On appeal, a trial court's findings of fact will be upheld if supported by substantial evidence. Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). "Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise." In re Marriage of Hall, 103 Wn.2d 236, 246, 692 P.2d 175 (1984).

In re Marriage of Bernard, 165 Wn.2d 895, 902–03, 204 P.3d 907 (2009).

Appellate courts have relied on several nonexclusive factors when considering whether a prenuptial agreement fairly provides for the spouse not seeking enforcement: (1) the proportional benefit between the parties, (2) restrictions on the creation of community property, (3) prohibitions on the

distribution of separate property upon dissolution, (4) the economic means of each spouse, (5) preclusion of common law and statutory rights to both community and separate property upon dissolution, (6) limitations on inheritance, (7) prohibitions on awards of maintenance, and (8) limitations on the accumulation of separate property. See, e.g., Bernard, 165 Wn.2d at 905 ("[A]n agreement disproportionate to the respective means of each spouse, which also limits the accumulation of one spouse's separate property while precluding any claim to the other spouse's separate property, is substantively unfair."); In re Marriage of Matson, 107 Wn.2d 479, 486, 730 P.2d 668 (1986) (holding that a prenuptial agreement was "grossly disproportionate" where all value, income, and earnings from separate property would remain separate upon dissolution); In re Marriage of Foran, 67 Wn. App. 242, 249–51, 834 P.2d 1081 (1992) (holding that a prenuptial agreement which waived any claim of right to separate property in the event of death or dissolution and effectively prohibited the growth of community property was substantively unfair).

It is "the well settled rule that '[t]the validity of prenuptial agreements in this state is based on the circumstances surrounding the execution of the agreement.'" Bernard, 165 Wn.2d at 904 (quoting In re Marriage of Zier, 136 Wn. App. 40, 47, 147 P.3d 624 (2006)). Thus, the substantive fairness of the agreement is evaluated as of the time of execution, rather than based on the parties' circumstances at the time of enforcement. Bernard, 165 Wn.2d at 904.

This is because prenuptial agreements are interpreted by applying principles of contract law. DewBerry, 115 Wn. App. at 364. Accordingly, it is upon the parties' meeting of the minds on all essential terms at the time of execution that the trial court must focus in evaluating substantive fairness.

John contends that the trial court erred in its evaluation of substantive fairness because it referenced the parties' 19 year and 10 month marriage in arriving at its ruling. We disagree.

Prenuptial agreements are unusual contracts in that they invariably lack an essential term of the agreement: the length of the agreement. The duration of a contract is obviously an essential term. But the parties to a prenuptial agreement do not contract to be married for a fixed term of years. Rather, the duration of the contract is later established by the length of the marriage.

This is not an idle concern. Terms of a prenuptial agreement that would be unquestionably substantively fair if, at the time of its execution, the parties anticipated a marriage lasting less than a year can easily be envisioned as substantively unfair if, at the time of its execution, the parties envisioned a fifty year marriage. Even when evaluating substantive fairness on the basis of the circumstances surrounding the execution of the agreement, and the parties' respective states of mind at that time, the anticipated duration of the agreement is not an irrelevant consideration.

In a typical contract situation, when the parties have omitted an essential

term by not setting forth the contract's duration, a court will conclude that the contract's duration was for a reasonable period of time. See, e.g., Restatement (Second) of Contracts § 204 (1981). Here, the parties entered into their marriage—and their prenuptial agreement—with the obvious intention to remain married so long as circumstances obtained such that each of them wanted to remain married. On the day of the wedding, this length of time was unknown. We now know that the length of such time was 19 years and 10 months.

In referencing the length of the marriage, the trial court was not evaluating the substantive fairness of the agreement based upon the parties' respective circumstances in 2007. Rather, it was merely noting a relevant consideration in evaluating the substantive fairness of the agreement upon its execution almost 20 years before the end of the marriage. Our Supreme Court, on at least one occasion, has similarly referenced the length of a marriage in evaluating substantive fairness. Matson, 107 Wn.2d at 486 ("In fact, after over 13 years of marriage, the agreement would serve to deny respondent any of her common law and statutory rights for a just and equitable distribution of property."). John's claim that the trial court erred in this regard is unavailing.

Nor did the trial court err in otherwise analyzing the agreement's substantive fairness. The agreement contained a number of the above-described factors that weigh against concluding that the agreement was fair to Dallene. Notably, the agreement did not make reasonable provisions for

Dallene and disproportionately benefited John. At the time of execution, John's separate property was worth over $1.8 million, he was earning between $50,000 and $60,000 annually working in commercial real estate, and he expected to receive a sizable inheritance. Dallene's separate property was negligible, she held a high school diploma, and she was earning between $20,000 and $30,000 per year. The few modest provisions contained in the prenuptial agreement for Dallene's benefit had little to no effect on John's separate property.[3]

Moreover, the prenuptial agreement substantially altered the parties' common law and statutory rights to the creation of community property and to the equitable distribution of property upon dissolution. The agreement placed restrictions on the parties' rights to the creation of community property through gifts to the community, prohibited the distribution or contemplation of separate property upon dissolution, and dictated a division "as equally as possible" of all community property upon dissolution. The agreement restricted their community holdings and precluded John and Dallene from obtaining a fair and equitable distribution of *all* assets upon dissolution, inconsistent with statutory dictates. See RCW 26.09.080 (requiring that the trial court must consider the nature and extent of both community and separate property); In re Marriage of Zahm, 138

[3] The prenuptial agreement allowed for appreciation of equity in the family home and for any contributions to the family residence to be characterized as community property. It also provided that where either party spends more than 10 percent of his or her workweek working on separate property accounts, any increase in value over 10 percent to that account would be characterized as community property. The trial court found that John's community efforts on his separate property did not yield an increase in value of over 10 percent and therefore did not create any community income under the terms of the prenuptial agreement.

Wn.2d 213, 218–19, 978 P.2d 498 (1999) (stating that fair and equitable division by a trial court "'does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage, both past and present, and an evaluation of the future needs of parties'" (quoting In re Marriage of Crosetto, 82 Wn. App. 545, 556, 918 P.2d 954 (1996))).

Several of the factors suggesting that a prenuptial agreement is substantively unfair are present here. Therefore, the trial court did not err in concluding that the prenuptial agreement was substantively unfair.

Where a prenuptial agreement is substantively unfair, it may nevertheless be enforced if "fairly made." Matson, 107 Wn.2d at 482–83. An economically unfair prenuptial agreement is enforceable only where the parties fully disclose their assets and voluntarily sign the agreement with full knowledge of their rights. Bernard, 165 Wn.2d at 902–03. After hearing testimony during the six-day trial, the trial court entered findings of fact and conclusions of law and wrote a detailed memorandum opinion, which the trial court explicitly incorporated by reference into the findings and conclusions. In its memorandum opinion, the trial court deemed it proved that Dallene "signed the [prenuptial agreement] without full disclosure of the nature and extent of [John]'s family assets and expectancies." This finding is supported by substantial evidence in the record. The trial court did not err in concluding that because the prenuptial agreement herein was obtained without full disclosure, the procedures used to obtain

Dallene's consent were inadequate and the agreement was therefore unenforceable. There was no error.

Because the prenuptial agreement was substantively unfair to Dallene and the procedures used to arrive at that agreement were lacking, the trial court properly found it unenforceable.

III

John next contends that the trial court abused its discretion in dividing the spouses' community and separate property. We disagree.

In dissolution proceedings, the trial court has broad discretion to make a just and equitable distribution of all property based on the factors enumerated in RCW 26.09.080.[4] In re Marriage of Rockwell, 141 Wn. App. 235, 242–43, 170 P.3d 572 (2007), review denied, 163 Wn.2d 1055 (2008). A trial court does not abuse its discretion by awarding separate property if the award results in a just and equitable distribution of assets. In re Marriage of Irwin, 64 Wn. App. 38, 48,

[4] RCW 26.09.080 provides, in full:

> In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:
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> (1) The nature and extent of the community property;
>
> (2) The nature and extent of the separate property;
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> (3) The duration of the marriage or domestic partnership; and
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> (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

822 P.2d 797 (1992); see, e.g., In re Marriage of Griswold, 112 Wn. App 333, 346, 48 P.3d 1018 (2002) (affirming a distribution of 50 percent of the community property plus a percentage of separate property of the other spouse); In re Marriage of Konzen, 103 Wn.2d 470, 478, 693 P.2d 97 (1985) (affirming property distribution in which the wife received both 50 percent of community property and 30 percent of the husband's separate property); Ramsdell v. Ramsdell, 47 Wash. 444, 445–46, 92 P. 278 (1907) (affirming an award in which the wife received 100 percent of the husband's separate property upon dissolution). A division of property need not be precisely equal; rather, it must be fair to both parties depending on their circumstances at the time of dissolution. RCW 26.09.080.[5]

The trial court has broad discretion in dividing property in a decree of dissolution and will be reversed only upon a showing of a manifest abuse of discretion. Buchanan v. Buchanan, 150 Wn. App. 730, 753, 207 P.3d 478 (2009). A trial court abuses its discretion if its decision is manifestly

[5] John additionally contends that because Dallene is relatively young and in good health, the trial court's division of property is unjustified. This is so, he claims, because under his characterization of the trial court's decision, the court awarded Dallene 100 percent of the community property and 60 percent of the total marital assets, a division that, he avers, is justifiable only under particular circumstances. Citing to Rockwell, John asserts that a trial court may fashion such "disproportionate awards" of community property only when there is a long term marriage or when one spouse is older, semi-retired, or ill. In Rockwell, this court affirmed a 60/40 division of property. 141 Wn. App. at 241. Although Rockwell makes reference to the wife's physical condition and age as the basis for the trial court's decision, John is incorrect that Rockwell stands for the proposition that special circumstances such as ill health, old age, retirement, or poor physical condition are required, or that the trial court must characterize the marriage as "long term," in order to make a division of property which deviates from a 50/50 split of any asset, community or separate. See Rockwell, 141 Wn. App. at 243. There is no magic formula for the trial court to apply when dividing property upon dissolution. Rather, the goal is a just and equitable distribution of property in light of the parties' overall circumstances. RCW 26.09.080.

unreasonable, meaning that its decision is outside the range of acceptable choices, or is based upon untenable grounds. In re Marriage of Littlefield, 133 Wn.2d 39, 46–47, 940 P.2d 1362 (1997). We review the trial court's factual findings for substantial evidence, which is "'evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.'" Rockwell, 141 Wn. App. at 242 (quoting Griswold, 112 Wn. App. at 339).

John assigns error to a number of the trial court's findings of fact. Each, however, is supported by substantial evidence in the record. In particular, John asserts that the trial court erred in valuing the John L. Bracken GST. This is so, John claims, because the methodology testified to by his economic expert witness was superior to that testified to by Dallene's expert witness.

Both expert witnesses testified. It was for the trier of fact to determine which testimony was worthy of belief. The trier of fact was free to believe one witness and not believe another. We will not "substitute our judgment for the trial court's, weigh the evidence, or adjudge witness credibility." In re Marriage of Greene, 97 Wn. App. 708, 714, 986 P.2d 144 (1999). The trial court does not abuse its discretion by assigning value to a property where the value assigned is within the scope of the evidence. In re Marriage of Soriano, 31 Wn. App. 432, 435, 643 P.2d 450 (1982). Here, the trial court was more persuaded by the testimony of Dallene's witness. Its valuation was within the range of the evidence. There was no error.

John next contends that the trial court erred by ordering John to pay the $950,000 mortgage owed on the "Yertle" house. [6] Yet, in light of the overall distribution of assets and liabilities, this order does not demonstrate a failure to properly consider the statutory factors. See RCW 26.09.080. To the contrary, John was awarded 100 percent of his separate property, valued at over $5 million, whereas Dallene was awarded the $2 million home in which she and the children will continue to live. That John will likely pay the mortgage debt with income from his separate property is not a prohibited outcome. Indeed, once a decree of dissolution is entered, all property of the former spouses becomes their separate property, as the community ceases to exist. The trial court's distribution of property is within the range of acceptable choices; the trial court did not abuse its discretion in dividing the parties' assets and liabilities.

[6] John also contends that the trial court erred by awarding Dallene the "Yertle" home despite the parties pretrial stipulation stating: "[t]he parties agree that the purchase of the ["Yertle"] home shall be without prejudice to either party's claims in their dissolution proceedings. Specifically, the purchase of the new home shall not be used to support the premise that this purchase represents the appropriate post marital standard of living for the wife." This stipulation serves to preclude the evidence of the house's purchase as establishing the appropriate postmarital standard of living for Dallene. The stipulation did not prohibit the trial court from awarding the "Yertle" home to Dallene in the event that, after applying the relevant legal standards, such a decision was warranted. The trial court found that the children will continue to rely on their parents for "residential and educational support" over the next ten years. The trial court considered this factor, among others, when awarding the property to Dallene. Nothing in the stipulation altered the legal principles to be considered by the court. There was no error.

IV

John contends that the trial court abused its discretion in awarding maintenance to Dallene. We disagree.

It is within the discretion of the trial court to award maintenance based on the factors enumerated in RCW 26.09.090.[7] In re Marriage of Bulicek, 59 Wn. App. 630, 633, 800 P.2d 394 (1990). Awards of maintenance are "a flexible tool by which the parties' standard of living may be equalized for an appropriate period of time." In re Marriage of Washburn, 101 Wn.2d 168, 179, 677 P.2d 152 (1984). "The only limitation on amount and duration of maintenance under RCW 26.09.090 is that, in light of the relevant factors, the award must be just." Bulicek, 59 Wn. App. at 633. "The trial court may properly consider the property

[7] RCW 26.09.090 provides, in full:

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

division when determining maintenance, and may consider maintenance in making an equitable division of the property." In re Marriage of Estes, 84 Wn. App. 586, 593, 929 P.2d 500 (1997). The spouse alleging error bears the burden of showing an abuse of discretion on the part of the trial court. In re Marriage of Sheffer, 60 Wn. App. 51, 56, 802 P.2d 817 (1990).

John contends that the award of maintenance is excessive, given the length of his marriage to Dallene. In support of his assertion that the trial court incorrectly characterized their marriage, John cites to an article written by Judge Winsor 28 years ago. Robert W. Winsor, *Guidelines for the Exercise of Judicial Discretion in Marriage Dissolutions*, Washington State Bar News (Jan. 1982). In the article, Judge Winsor characterizes long term marriages as those lasting more than 25 years.[8] Winsor, supra, at 14–19. John makes a great deal of this article, arguing that, in effect, it amended the relevant statute. However, the statute does not attempt to categorize the length of marriages, and Judge Winsor's article is not controlling. Indeed, the proper question is whether the trial court properly considered the numerous, nonexclusive statutory factors when awarding maintenance. RCW 26.09.090. The trial court acknowledged the difficulty in slavishly adhering to the theories espoused in Judge Winsor's article. Because the trial court properly considered the statutory factors,

[8]John raises this same argument to challenge the trial court's division of property. However, when dividing marital property, the trial court is not required to fashion its award based upon Judge Winsor's length-of-marriage categories. Similar to awards of maintenance, the relevant statute lists a number of nonexclusive equitable factors—including the length of the marriage—that the trial court must consider in dividing assets. RCW 26.09.080(3).

including the length of the parties' marriage, it did not err.

John fails to demonstrate that the award of maintenance is unjust.[9] The trial court considered John and Dallene's 19 year and 10 month marriage in which they lived a life of great luxury, raised three children together with Dallene serving as the primary caregiver and stay-at-home parent, along with Dallene's limited education and limited future prospects for employment. The trial court also took into account its property division, which left John with significantly greater property ownership and income potential than Dallene.[10] Notwithstanding John's concern that the maintenance award is substantial or that it may necessitate payment from John's separate property assets, these circumstances do not constitute a manifest abuse of discretion by the trial

[9] John additionally contends that because Dallene is not disadvantaged in some way, either from disability or terminal illness, the award of maintenance is improper. John fails to demonstrate that an award of maintenance for longer than a handful of years is prohibited. The trial court has broad discretion to award maintenance. Bulicek, 59 Wn. App. at 633. Simply because the trial court awarded Dallene maintenance of 20 years duration when she was purportedly healthy does not make it improper. See, e.g., In re Marriage of Nicholson, 17 Wn. App. 110, 116, 561 P.2d 1116 (1977) (affirming an award of 10 years of maintenance awarded not on the basis of illness or disability, but rather because the wife had only a high school education and virtually no employment history).

[10] John contends that the trial court overlooked John's future payments to his mother's estate for the purchase of the John L. Bracken GST. He asserts that the maintenance award, coupled with his payment in satisfaction of the GST purchase, leaves him with significantly less monthly income than Dallene. John is the future recipient of one third of his mother's estimated $20 million estate; the trial court estimated this expectancy to have a net worth of $2 to $3 million, but properly did not include it in the division of property nor attempt to value the future inheritance for the purposes of the decree. In fact, the trial court did consider his ongoing payments to his mother's estate and found that "[p]resumably, [John] will be able to make his own decisions regarding cancellation, satisfaction, forgiveness or continued payment of that note upon distribution of his mother's estate." John desires that we consider his future payments to this substantial expectancy, while at the same time getting the benefit of the fact that the trial court did not include his future inheritance in dividing assets. In essence, John is asking this court to double count the debt to his own expectancy, which the trial court properly excluded from the decree of dissolution. His contention is unavailing.

[11] John additionally contends that the trial court's award of maintenance is improper because it expressly requires John to continue paying maintenance for a period of time even if Dallene remarries. However, a maintenance award of this type does not constitute an abuse of

court.[11] The trial court's award of maintenance was made with appropriate reference to the controlling statute, RCW 26.09.090, was within the range of acceptable choices, and did not constitute an abuse of discretion.

V

John finally contends that the trial court abused its discretion by ordering him to sign a confession of judgment in the amount of the mortgage remaining on the "Yertle" home. We disagree.

Confessions of judgment are authorized by statute and are designed to resolve disputes among willing parties. RCW 4.60.050; Copeland Planned Futures, Inc. v. Obenchain, 9 Wn. App. 32, 36, 510 P.2d 654 (1973). "A confession of judgment requires the consent of both parties to the judgment." Pederson v. Potter, 103 Wn. App. 62, 68, 11 P.3d 833 (2000). John's contention notwithstanding, the record reveals that John's attorney conceded on John's behalf to a contingent confession of judgment in lieu of the immediate entry of a monetary judgment against John in the amount of the mortgage debt. To relieve John of the burden posed by the entry of a $950,000 judgment, the trial court instead ordered that John sign a confession of judgment to be filed only upon his default on the mortgage. The record reveals that this was discussed in open court with John's attorney indicating that the confession of judgment was

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discretion. See RCW 26.09.170(2) (creating a presumption that an obligation to pay maintenance will terminate upon the remarriage of the party receiving maintenance *unless* expressly provided in the decree); In re Marriage of Williams, 115 Wn.2d 202, 209, 796 P.2d 421 (1990) ("The Legislature apparently intended, however, to allow trial courts the power to award maintenance beyond remarriage in appropriate cases.")

preferable to the entry of judgment. The trial court did not err by acting in accordance with this discussion.

In a motion for reconsideration, John opposed the trial court's order, arguing that he had not consented to a confession of judgment.[12] John now argues that the trial court's denial of his motion for reconsideration was in error. Motions for reconsideration do not entitle parties to relief on a claim already resolved against them, absent an error or oversight which materially affects the substantial rights of the parties. CR 59;[13] see, e.g., Vaughn v. Vaughn, 23 Wn.

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[12] Where the trial court denies a motion for reconsideration, we review the denial for abuse of discretion. Kleyer v. Harborview Med. Ctr. of Univ. of Wash., 76 Wn. App. 542, 545, 887 P.2d 468 (1995).

[13] Superior Court Civil Rule (CR) 59 states in relevant part:

> (a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:
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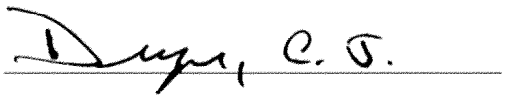
> (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;
>
> (2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;
>
> (3) Accident or surprise which ordinary prudence could not have guarded against;
>
> (4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;
>
> (5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;
>
> (6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;
>
> (7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;
>
> (8) Error in law occurring at the trial and objected to at the time by the party making the application; or

App. 527, 531, 597 P.2d 932 (1979). A change of heart is not a ground for relief under CR 59. The fact that John altered his position, objecting to the confession of judgment upon reconsideration, is of no moment. Parties cannot use a motion for reconsideration to get a "second bite at the apple." 15A Karl B. Tegland & Douglas J. Ende, Washington Practice: Handbook on Civil Procedure § 65.1 at 520 (2009). Appellate relief is not warranted.

VI

Dallene requests an award of attorney fees pursuant to RCW 26.09.140. In an appeal from a decree of dissolution, "[t]he appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs." RCW 26.09.140. An award of attorney fees on appeal from a decree of dissolution is determined by economic need and ability to pay. In re Marriage of Terry, 79 Wn. App. 871, 869, 905 P.2d 935 (1995). Because the trial court's distribution of property and award of maintenance was designed to place John and Dallene on roughly equal economic footing, we decline to award attorney fees.

Affirmed.



(9) That substantial justice has not been done.

We concur: